(1)

Supreme Court, U.S.
FILED

95- 935 NOV 20 1995

OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

SHRI RAM,
PETITIONER

V.

SUPERIOR COURT OF ALAMEDA COUNTY, CA, et al.
Respondent.

Petition for Writ of Certiorari to
The Supreme Court of California
San Francisco, California

PETITION FOR WRIT OF CERTIORARI

SHRI RAM(in pro per)
1425 Proud Dr.
San Jose, CA 95132
(408) 923-6491

127 pp

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether, a patient has the Patient Rights and Personal Liberty to pick and choose a good doctor for the health, safety and welfare of the patient, and avoid a bad doctor?

2. Whether, every doctor must obtain patient consent, before touching the body of the patient for a procedure, for the preservation of Personal Liberty and Patient Rights?

3. Whether, ignoring the solid evidence and controversy, regarding the patient consent to a doctor to touch the body of the patient for a procedure, and still granting the Summary Judgment to a defendant doctor in the absence of patient consent to nullify the charge of Battery, is defiance of Case Law and Statutory Law by the Court, resulting in bias?

4. Whether, disallowing a patient to pick and choose a doctor of his own choice and avoiding an undesirable doctor for the patient's safety and welfare in an elective procedure, when the patient pays the doctor's fee, is bias and violation of the Patient Rights and Constitutional right of Personal Liberty by the Court, which grants Summary Judgment to the defendant doctor, despite the concrete evidence and controversy, negating the patient consent to the defendant doctor?

5. Whether, a patient, who pays the doctor's fee and hospital expenses has the Patient Rights and Personal Liberty to pick and choose a doctor for his health, safety and welfare in an elective procedure, refusing an unwanted medical care and precluding

the intruding doctor from touching his body, indulging in any part of the elective procedure?

6. Whether, it is a medical Battery, when a doctor touches the body of the patient and indulges in an elective procdure, without the consent of the patient and against the will of the patient, and whether the awarding of the Summary Judgment to the defendant doctor by the Court in the absence of patient consent is the obliteration of Patient Rights and Personal Liberty, divulging the Court's prejudices against the patient?

7. Whether, the denial of amendment of complaint for the first time, is abuse of discretion and violation of Case Law by the Court, revealing the prejudices against the patient?

PARTIES TO PROCEEDINGS IN THE SUPREME COURT OF CALIFORNIA SAN FRANCISCO, CALIFORNIA

1. Shri Ram, Plaintiff/Petitioner
2. Superior Court of Alameda County, CA, et al. / Respondent.
3. California State Court of Appeal, San Francisco, California.
4. Supreme Court of California, San Francisco, California.
5. Dr. Steven DeGalan

TABLE OF CONTENTS

Page

THE QUESTIONS PRESENTED FOR REVIEW....i

PARTIES TO PROCEEDINGS IN THE
SUPREME COURT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA.....iv

TABLE OF CONTENTS.....V

TABLE OF AUTHORITIES.....Viii

OPINIONS BY OTHER COURTS.....1

JURISDICTIONAL GROUNDS.....4

STATUTORY PROVISIONS.....4

STATEMENT OF THE CASE.....4

The course of Proceedings in
the Courts Below.....4

ARGUMENT AND AUTHORITIES ON REASONS
FOR GRANTING A WRIT OF CERTIORARI.....8

PETITIONER'S FIRST ARGUMENT:
The principles of Summary Judgment
were violated by the Courts.....8

PETITIONER'S SECOND ARGUMENT:
Defendant made false declarations
for Motion for Summary Judgment.....20

CONCLUSION.....29

APPENDIX

ORDER RE: MOTION FOR LEAVE TO FILE PROPOSED AMENDED COMPLAINT BY PLAINTIFF, SHRI RAM: MOTION FOR SUMMARY JUDGMENT BY DEFENDANT, STEVEN DEGALAN, M.D.: DISMISSAL.....A-1

PROPOSED ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF RULING ON MOTION FOR SUMMARY JUDGMENT.....A-4

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION ONE.....A-8

FIRST DISTRICT COURT OF APPEAL: Petition for Review Denied.....A-26

AUTHORIZATION FOR AND CONSENT TO SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES.....A-27

SIGNED CONSENT FORM FOR KG ROMINE,MD/A SYWAK,MD.....A-30

CONSENT FORM SIGNED BY TEJ RAM FOR Dr. SONI at DOCTORS MED. CENTER....A-33

CONSENT FORM SIGNED BY SHRI RAM FOR Dr. Soni at DOCTORS MED. CENTER....A-38

CONSENT FORM SIGNED BY SHRI RAM FOR DOCTORS: Neal/Mac Millan/Tobin/ Concepcion at DOCTORS MED. CENTER..A-43

PRE-OP PTCA STANDING ORDERS.....A-48

DECLARATION OF PLAINTIFF SHRI RAM,
IN OPPOSITION OF MOTION FOR
SUMMARY JUDGMENT.....A-54

DECLARATION OF DEFENDANT STEVEN
DeGALAN,M.D., IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT.....A-65

DECLARATION OF ROMESH JAPRA,M.D.,
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT BY DEFENDANT STEVEN
DeGALAN,M.D.....A-68

PROCEDURE: PTCA.....A-72

PATIENT RIGHTS/RESPONSIBILITIES.....A-75

PICKING OUT A GOOD PHYSICIAN CAN
BE A TRICKY PROCESS.....A-78

EXPLANATION OF BENEFITS: SHOWING Dr.
STEVEN DeGALAN'S BILLING OF
6/22/93 and 6/23/93.....A-83

BUSINESS CARDS OF ROMESH JAPRA M.D.,
AND STEVEN DEGALAN,M.D., SHOWING
THEIR SPECIALTY AND NOT A SURGEON.....A-84

DECLARATION OF PLAINTIFF,
SHRI RAM IN OPPOSITION OF MOTION
FOR SUMMARY JUDGMENT.....A-85

TABLE OF AUTHORITIES

Cases — Page

Rall V. Lovell
(1951) 233 P2d 681 105 C.A.
2d 507.....11

Walsh V. Walsh
(1941) 116 P2d 62 18C 2d 439.....11

Moore V. Eli Lilly & Co.
(D Mass 1986) 626 F. Supp
Massachusetts Law.....11

Gaskin V. Goldwasser
166 Ill App 3d 996 117
Ill Dec. 734.....11

Gigax V. Ralston Purina Co.
(1982) 136 CA 3d 591 186
CR 395.....13

Mann V. Cracchiolo
38 C 3d 18 210 CR 762.....14

Aetna Cas. & Sur. Co. V. Aceves
(1991) 233 CA 3d 544 284
CR 477 Fn 8.....14

Rafeiro V. American Emp. Ins. Co.
(1970) 85 Cal Rptr 701
5 C.A. 3d 799.....15

R.D Reeder Lathing Co. V. Allen
(1967) 57 Cal Rptr 841 425 P2d
785 66 C.A. 2d 373.....16

Heber V. Yaeger
(1967) 59 Cal Rptr 353
251 C.A. 2d 258.....17

Kelliher V. Kelliher
(1951) 226 P2d 554 101
C.A. 2d 226.....18

Monex Int'l Ltd. V. Peinado
(1990) 224 CA 3d 1619
274 CR 667.....19

Stationers Corp. V. Dun &
Bradstreet, Inc.
(1965) 62 C 2d 412 42 CR
449 452.....20

United Farm Workers of America V.
Agricultural Labor Relations Bd.
(1985) 37 Cal 3d 912 210 Cal
Rptr 453 694 P2d 138.....27

People ex rel. Dept. of Public
Works V. Vallejos
(1967, 1st Dist.) 251 Cal App 2d
414 59 Cal Rptr 450.....27

Mc Donald V. Superior Court
(1986, 2nd Dist.) 180 Cal App 3d
297 225 Cal Rptr 394.....27

STATUTES

CCP Section 437 C(f).....11

CCP Section 437 C(i).....13,21

CCP Section 437 C(n).....20

CCP Section 473.....28

OPINIONS BY OTHER COURTS

The Superior Court of California, County of Alameda, Pleasanton, California, granted the Summary Judgment to the defendant, Steven DeGalan, based on the patient consent, when absolutely no patient consent was ever given to the defendant, Steven DeGalan to touch the body of the patient[Petitioner], during an elective procedure at Washington Hospital, beating the arrival of the chosen doctor (See Appendix A-54,55) for the procedure. Of course, a Motion for leave to file an amended complaint for the first time by the Petitioner was denied by the Superior Court as well. An order was entered, granting the Summary Judgment to the defendant, Steven DeGalan and denying the Petitioner's Motion for leave to file an Amended complaint for the first time, in a suit styled SHRI RAM VS. STEVEN DeGALAN WASHINGTON HOSPITAL, et al. on Sep. 14,

1994 by Superior Court of California, County of Alameda, Pleasanton, Calif. in civil action No. H-173004-5. However, a Motion for Reconsideration on the Summary Judgment and Motion for leave to file an amended complaint was lodged. Again, the Superior Court upheld its order, which was entered on Oct. 26, 1994. All of the content of these orders is reproduced in the Appendix (A-1 to A-7) to this petition.

As a result, the Petitioner filed an Appeal, case No. A067814, Old No. A066466, regarding the above decision, in the First District Court of Appeal, San Francisco, Calif. The Court of Appeal actually quoted everything said by the defendant, affirming the judgment, thereby dissolving the Patient Rights and Constitutional right of personal

liberty to select a doctor of your choice for the health, safety and welfare of the patient. Once again, the Petitioner filed a "Petition for Rehearing" in a futile effort to seek justice in the Court of Appeal. Yes, the "Petition for Rehearing" was simply denied. All of the content of the opinion and denial of the "Petition for Rehearing" is reproduced in the Appendix (A-8 to A-24) to this petition.

Therefore, a "Petition for Review", case No. S047991, Shri Ram Vs. Steven DeGalan was filed in the Supreme Court of California, San Francisco, Calif. with the utmost belief of finally achieving justice in the case. Unfortunately, the denial of the "Petition for Review" by the Supreme Court of Calif. is the subject of this petition. All of the content of this denial is reproduced in the Appendix (A-26) to this petition.

JURISDICTIONAL GROUNDS

The authority of the Supreme Court of the United States to review acts of State Court is explicitly granted by law-Section 25 of the Judiciary Act of 1789. Petitioner prays that a Writ of Certiorari issue to review the granting of the Summary Judment and the denial of Amendment of Complaint.

STATUTORY PROVISIONS

This Petition concerns the prejudicial treatment of the Petitioner's case and the denial of the Due Process of the Law to a fair trial, by treating the Summary Judgment proceeding like a trial and deviating from the principles of the Summary Judgment proceeding.

STATEMENT OF THE CASE

The Course of Proceedings in the Courts Below

Plaintiff Shri Ram, timely initiated a suit in Superior Court of California,

County of Alameda, Hayward, California against Washington Hospital and Dr. Steven DeGalan on Dec. 1,1993. The suit sought judgment against the defendants for Assault and Battery and Intentional Infliction of Mental Harm. But, the case was transferred from Hayward Superior Court to Dept. 81 of Oakland Superior Court, Oakland, Calif., where the case was dismissed against Washington Hospital by the judge, Honorable James R. Lambden. During, the hearing of Feb. 15,1994, I was forewarned by the judge, Honorable, James R. Lambden, that I would not survive in the Summary Judgment,when nobody had even filed for a Summary Judgment or talked about it.

Eventually, the Defendant Dr. Steven DeGalan filed for a Summary Judgment on May 18,1994 at Superior Court of California County of Alameda, Southern Division. Since I was fearful of unfair treatment by the judge, Honorable James R. Lambden, I filed Peremptory Challenge on June 30,1994 to

improve my chances of a fair trial. Unfortunately, the judge ignored my "Peremptory Challenge". Therefore, I filed the "Petition for Writ of Mandamus" in California State Court of Appeal, San Francisco, Calif. on Jul. 20,1994. However, the Writ was denied by First Dist. Court of Appeal. But, the Defendant's Motion for Summary Judgment was transferred to Dept. 50 of Superior Court of California, Alameda County, Pleasanton, California.

The Summary Judgment was awarded to the Defendant, Dr. Steven DeGalan by the judge, Honorable Mark L. Eaton of Dept. 50 of Alameda County Superior Court, Pleasanton, CA on Sep. 14,1994 and the Petitioner's Motion for leave to file an Amended Complaint for the first time was denied. In response, the Plaintiff Shri Ram had filed a Motion for Reconsideration. Although, the Court granted the

Motion for Reconsideration, yet it upheld its order, which was entered on Oct. 26, 1994 [Appendix A-1 to A-7].

As a result, the Petitioner filed an appeal in the First District Court of Appeal, San Francisco, CA. Surprisingly, the Court of Appeal actually quoted everything said by the Defendant, dissolving the **PATIENT RIGHTS** and the Constitutional right of Personal Liberty to select a doctor of your own choice for the health, safety and welfare of the patient. Once again, the Petitioner filed a "Petition for Rehearing" in a futile effort to seek justice in the First District Court of Appeal. But, the petition for rehearing was simply denied [Appendix A-8 to A-25].

Therefore, a "Petition for Review" was filed in the Supreme Court of Calif., San Francisco, California on August 2,1995, with the utmost belief of finally attaining justice in the case. Sadly, the Supreme Court of Calif. simply denied the

"Petition for Review" on Sep. 27, 1995 [Appendix A-26].

As such, the Petiotioner is now approaching the United States Supreme Court for "Writ of Certiorari" to render justice in the case.

ARGUMENT AND AUTHORITIES ON REASONS FOR GRANTING A WRIT OF CERTIORARI

PETITIONER'S FIRST ARGUMENT

The principles of Summary Judgment were violated by the Courts

The judge, Honorable Mark L. Eaton of Pleasanton Superior Court granted the Summary Judgment, stating "Plaintiff failed to submit evidence, which would refute or raise triable issues of material fact as to Plaintiff's consent to Defendant Dr. DeGalan....."[Appendix A-2 toA-3] The judge as an intelligent human being knows that Dr. DeGalan was not working on an inanimate object, incapable of giving consent, to nullify signed consent form for a specific doctor, excluding DeGalan.

See Appendix A-27 to A-43. How could a judge ignore the very essence of the **PATIENT RIGHTS** [Appendix A-75 to A-77], which is applicable to all the hospitals in Calif and not as claimed by First Dist. Court of Appeal [Append. A-8 to A-25], exempting Washington Hospital [Append. A-85 to A-87]. The judge was adamantly defending Dr. DeGalan that he could lose his license, forgetting that doctor's later sham declaration cannot be the replacement or a substitute for signed patient consent form [Append. A-27 to A-47]. There was no way, the judge was going to see that my declaration [A-54 to A-64] had already controverted and shown that Dr. Japra, "didn't know, he was out there doing the procedure." Also, Dr. Japra said, "Good thing you stopped Dr. DeGalan, or else he would have put a "tear" in the other blood vessel also." The patient consent forms [A-27 to A-47] for the deliverance of optimum medical care is not meant to a trickery that, First District Court of

Appeal can suggest to layman not to read anything in the parenthesis [A-8 to A-25] or the fine print and somehow a specific name like Dr. Steven DeGalan will appear spontaneously on the consent form, with out writing that name on the form. Is the medical consent forms designed to let loose undesirable doctors on the unsuspecting patients? In the name of justice, the judge should have suspected, why the doctors have to resort to extraneous means, like sham declarations to assert patient consent, when they have at their disposal consent forms to list every doctor [A-27 to A-47] designed to seek patient consent for each doctor for the properly scheduled elective procedure. Certainly, I was deprived of the Due Process of the Law to a fair trial, when the Court conducted the Summary Judgment proceeding like a real trial. A Motion for Summary Judgment is not a trial on the merits, but is merely to determine whet-

her there is an issue to be tried [Rall V. Lovell (1951) 233 P2d 681 105 C.A. 2d 507; Walsh V. Walsh (1941) 116 P2d 62, 18c 2d 439]. It was shown that patient consent was nonexistent for Defendant, Dr. DeGalan and the defendant's declarations were a "sham". Therefore, there was an issue to be tried based on consent. Also, where the moving party's declarations are a reflection of declarant's state of mind, the Court has discretion to deny the Summary Judgment [CCP Section 437 C(f)].

Medical treatment as Battery- a Battery is an intentional offensive touching of a person done without consent [Moore V. Eli Lilly & Co. 626 F. Supp. 365 (D Mass 1986) Massachusetts Law]. The gist of an action for Battery is the absence of the patient's consent to the contact [Gaskin V. Goldwasser 166 Ill App 3d 996 117 Ill Dec. 734]. Such was my case, pertaining to the incident of 6/22/93 at Washington Hospital, where Dr. DeGalan had punctured

my right groin and invaded my heart with out my consent and against my will[A-27 to A-32; A-54 to A-64]. Again, the defendant Dr. DeGalan, after being completely rejected by the patient on 6/22/93, was daring enough to haunt me the next day on 6/23/95, intruding on the nurse and started ripping the dressing from my right groin, delivering pain and enormous mental strain. Of course, the defendant Dr. DeGalan was bold enough to bill me for the unwarranted services [A-83].

As a matter of fact, the evidence [Appendix A-27 to A-32; A-48 to A-64; A-84 to A-87] had controverted the evidence of the defendant, showing no position, function or name, such as Dr. Steven DeGalan for any part of the procedure of 6/22/93. Since, I had shown "bad faith" declaration on the part of the defendant, Dr. DeGalan, the judge should have denied the Summary Judgment, imposing sanctions for filing "bad faith" declaration, simply to win the Summary Judgm-

ent [CCP Section 437 C(i)]. Actually, the Petitioner had succeeded in controverting [Appendix A-27 to A-64; A-72 to A-87] all of the presentation of the defendant, Dr. DeGalan for the Summary Judgment. But, the judge clung to his prejudices and granted the Summary Judgment anyway. The judge violated the principles of Summary Judgment, concerning this Summary Judgment, because the judge has no power to weigh the evidence or inferences of the parties, regarding a Summary Judgment. Therefore, if an inference is controverted by other evidence, or even by other reasonable inferences, there is a "triable issue" of fact and the motion must be denied [Gigax V. Ralston Purina Co. (1982) 136 CA 3d 591, 186 CR 395]. There was a triable issue on the subject of patient consent. A Summary Judgment does not allow "weighing of declarations". If the opposing party discloses sufficient knowledge of a subject [Appendix A-85 to A-87]

to render an expert opinion, the Court cannot disregard that opinion, solely because other more qualified experts opine to the contrary [Mann V. Cracchiolo 38 C 3d 18 210 CR 762]. Even vague, ambiguous testimony may raise a triable issue of fact [Aetna Cas. & Sur. Co. V. Aceves (1991) 233 CA 3d 544 284 CR 477, fn 8]. Consequently, the judge should not have engaged in this practice to uphold the "sham" declarations of doctors over the Petitioner's in a non-emergency situation, dissolving the very essence of **PATIENT RIGHTS** and Personal Liberty, granting the Summary Judgment based on patient consent, when absolutely none was present for Dr. DeGalan [Appendix A-27 to A-32; A-54 to A-64]. Fortunately, the Petitioner possessed superb knowledge of the medical field [Append. A-85 to A-87] to expose the cover up of a Battery, causing damage [A-54 to A-64]. Apparently, affidavits of a moving party (Dr. DeGalan) are to be strictly construed

and those of his opponent (Shri Ram) liberally construed, and doubts as to propriety of granting the motion should be resolved in favor of party opposing the motion [Rafeiro V. American Emp. Ins. Co. (1970) 85 Cal Rptr 701 5 C.A. 3d 799]. Such criteria was not followed by the Courts. However, the judge acted against this principle and erroneously granted the Summary judgment, based on patient consent; in spite of all the evidences, indicating absence of patient consent [A-27 to A-32; A-48 to A-64] to Dr. DeGalan and the showing of "sham" declarations.

The object of Summary Judgment is to discover proof. Did the judge discover appropriate proof- a signed patient consent form for Dr. Steven DeGalan in a non-emergency situation? Of Course not! Did the pre-op orders [Appendix A-48 to A-53], the blue print of what is going to be done to the patient and by which doctor, show the position (Assistant doctor space was left

completely blank), function, or name of Dr. Steven DeGalan for any part of the procedure of 6/22/93? Of course not! On the motion for Summary Judgment, the Court does not resolve conflicting factual allegations, for the purpose of the procedure is to discover, whether parties have evidence requiring assessment at trial [R.D Reeder Lathing Co. V. Allen (1967) 57 Cal Rptr 841 425 P2d 785 66 C.A 2d 373]. Yes, I had provided evidence [A-27 to A-64; A-74 to A-87], requiring assessment at trial. So, the Motion for Summary Judgment should have been denied and I should have been allowed a fair trial, under the Due Process of the Law; and granting the judgment was a prejudicial error.

Summary Judgment is proper only, when affidavits of moving party state facts that, if proved, would sustain judgment in his favor, and opposing party does

not show by counter declarations the existence of triable issues with respect to any of these facts [Heber V. Yaeger (1967) 59 Cal Rptr 353 251 C.A. 2d 258]. Both, the declarations of Dr. Romesh Japra and Dr. DeGalan [Appendix A-65 to A-71] claimed Dr. Steven DeGalan as an "Assistant". However, the Petitioner's evidence and declarations [A-27 to A-64; A-74 to A-87] showed this to be a "sham" designed to dilute out the importance of the patient consent in light of **PATIENT RIGHTS** and Personal Liberty. Whether, you are the doctor of the patient or an assistant doctor, you both need a signed patient consent, authorizing both of you to touch the patient to perform any part of the procedure. Look at the Appendix A-30 to A-32, showing KG Romine MD/A Sywak MD. They are like two sides of the same coin, appearing together on the consent form for patient authorization. Again, examine Appendix A-43 to

A-47 indicating four doctors appearing all together on the consent form for patient approval. Obviously, Dr. DeGalan failed to obtain patient consent, before touching the patient to indulge in any part of the procedure of 6/22/93 on Shri Ram at Washington Hospital. Despite, the Petitioner's counter declarations and evidences, showing the existence of triable issues on the subject of patient consent, as mentioned above, the judge disregarded everything and granted the Summary Judgment based on patient consent. Such an act of the judge was a prejudicial error.

A Summary Judgment is improper if supporting declarations are insufficient for any reason, even if opposing declarations raise no issue of fact, or if there is no opposing declaration [Kelliher V. Kelliher (1951) 226 P2d 554, 101 C.A. 2d 226]. It has been shown that, the moving party's declarations [A-65 to A-71] were not only insufficient, because they cannot replace,

substitute or eliminate patient consent in light of **PATIENT RIGHTS**[A-75 to A-82], but also were shown to be a "sham". As such, the judge should have acted accordingly, denying the Summary Judgment, rather than granting the Summary Judgment, based on patient consent. It was a prejudicial error.

The defendant's motion for Summary Judgment was totally devoid of merits. A motion is "frivolous" and in "bad faith", where any reasonable lawyer would agree, it is totally devoid of merit, for eg. filing a Motion for Summary Judgment on the basis of "undisputed facts" that are clearly in dispute [Monex Int'l Ltd. V. Peinado (1990) 224 CA 3d 1619 274 CR 667]. It was a prejudicial error, when the judge ignored the Petitioner's "disputed facts" and still granted the Summary Judgment, based on patient consent.

Every judge knows, there is a very

heavy burden of proof, required for granting the Motion for Summary Judgment [Stationers Corp. V. Dun & Bradstreet, Inc. (1965) 62 C 2d 412 42 CR 449 452; Sprecher V. Adamson Companies (1981) 30 C 3d 358 372 178 CR 783 791]. Yet, the analysis of my case will show, such criteria was not applied in light of all the evidences presented, granting the Summary Judgment, against the established principles of Summary Judgment. The record substantiates that, the opposing party (Shri Ram) had managed to provide ample evidence, raising a "triable issue of material fact" on the subject of patient consent, and the judge should not have granted the Motion for Summary Judgment, based on Patient consent, under [CCP Section 437 C(n)]. It was a prejudicial error.

PETITIONER'S SECOND ARGUMENT

<u>Defendant made false declarations for Motion for Summary Judgment</u>

Sanctions may be imposed for filing "bad faith" declarations to win Summary Judgment [CCP Section 437 C(i)]. This issue of "sham" declaration of defendant was brought to the attention of the judge, Honorable Mark L. Eaton of Pleasanton Superior Court. Declaration under the statute is to be made by a person having knowledge of the facts, and must show that facts alleged are within the personal knowledge of the declarant. However, the defendant, Dr. Steven DeGalan prepared a false declaration [A-66,67], where he stated, "Because of the impediment, it was necessary that entry be made at the left groin. Therefore, I withdrew the sheathing from the right side." Not so, and the cover up is being refuted by the Petitioner. As a matter of fact, Dr. DeGalan had gained complete entry and had invaded my heart without my consent, telling me, "All three vessels are completely

plugged!" [Appendix A-54 to A-64; A-85 to A-87]. The introducer sheath from the right groin was not removed in the operating room, as declared by Dr. DeGalan, or else I would have been gushing blood, because it requires a very heavy pressure with a clamp to halt the bleeding. The sheath stayed in the right groin blood vessel all the time, during the procedure. It was removed in the hallway, after the complètion of the whole procedure, and a clamp was applied for a long time to stop the bleeding by a different individual [See Appendix A-74], placing a sand bag over it, proving Dr. DeGalan's above mentioned statement to be false. Above all, Washington Hospital falsified medical record indicating, "1132 Dr. DeGalan left room" [A-72], merely to offer protection and an alibi that, Dr. DeGalan was not in contact with Dr. Japra, when he arrived in the operat-

ing room [A-58,59]. The deliverance of optimum medical care is critically dependent on the recording of the data, including the time and date. Now, examine Appendix A-72 to A-74, which is under the absolute control of the hospital, occurring behind the back of the patient. Washington Hospital tries to impress they had minute to minute accounting of all the happenings. Well, take a look at the discrepancies: A-72 shows a date of 6/22/93, Japra/DeGalan and yet the second page A-74 harbors page I, page II, Japra only and a date of regression of 6/21/93. As a matter of fact, Dr. DeGalan's own declaration [Appendix A-67], "The angioplasty procedure was performed entirely by Dr. Japra", indicates his personal knowledge of the whole angioplasty (PTCA) procedure, substantiating his contact with Dr. Japra, refuting Washington Hospital's recording, "1132 Dr. DeGalan left room." As usual,

the judge did not pay any heed to this evidence, divulging the cover up of the incident of 6/22/93 at Washington Hospital. Surprisingly, First District Court of Appeal took this document [Appendix A-72 to 74] as evidence of patient consent to Dr. Steven DeGalan.

Furthermore, Dr. Romesh Japra too indulged in the "sham" declaration, prepared later on for the Summary judgment and not filed initially, declaring Dr. Steven DeGalan as an "Assistant." But, Petitioner's declaration [Appendix A-61] reveals, Dr Japra saying, "I didn't know, he was out there doing the procedure. Good thing you stopped Dr. DeGalan, or else he would have put a "tear" in the other blood vessel also" and all the signed consent forms [Appendix A-27 to A-32], including the pre-op

order [Appendix A-48 to A-53], which is the blue print of what is going to be done to the patient and which doctor is going to do it [Appendix A-85 to A-87], were devoid of Dr. DeGalan's name or his function as an assistant. Actually, the pre-op order was prepared by Dr. Japra, who contradicted himself by preparing a fake declaration [Appendix A-68 to A-71]. Shouldn't the judge have questioned the "sham" declaration, prepared afterwards and not filed initially, because it is the patient, who gives consent and authorization [Appendix A-27 to A-47] to his own doctor and other doctors, if disclosed for the elective procedure? Unfortunately First District Court of Appeal was too quick to deduce and interpret the delay in the filing of the Petitioner's Motion for amending the complaint for the first time, as "sham" and not abuse of discretion. Shouldn't then, the Court also label Dr.

Japra's declaration as "sham", because it was not filed initially but later on, contrdicting his statement about no knowledge of Dr. DeGalan [Appendix A-61] and the pre-op orders [Appendix A-48 to A-53]? In my case, the delay for filing the Motion for Amendment was caused by the act of Oakland Superior Court, which refused to give me an earlier date for the Motion and flatly told me to take it or leave it and threatened to hear the Motion after the Summary Judgment hearing, if I did not accept the simultaneous hearing with Summary Judgment hearing. There was no "equality and justice" for me in the Court, but disparate treatment all the time. Perhaps, to utilize the so-called delay as a "sham" and deny the amending of the complaint for the first time, forgetting the amendments are allowed by

the Courts, even at the time of the trial [United Farm Workers of America V. Agricultural Labor Relations Bd. (1985) 37 Cal 3d 912 210 Cal Rptr 453, 694 P2d 138] and during trial [People ex rel. Dept. of Public Works V. Vallejos (1967,1st Dist.) 251 Cal App 2d 414, 59 Cal Rptr 450]. Above all, the Petitioner is not an attorney and yet received such harsh an unfair treatment from the Courts. Denial of leave to amend constitutes an abuse of discretion, irrespective of whether leave to amend is requested, unless the complaint shows on its face that it is incapable of amendment [Mc Donald V. Superior Court (1986,2nd Dist.) 180 Cal App 3d 297, 225 Cal Rptr 394]. However, the Petitioner had presented a "Proposed Amended Complaint", proving the capability of amendment, involving minor changes. While, a motion to permit an amendment to a pleading to be filed is one addressed to the discretion

of the Court; it is rare case in which a Court will be justified in refusing a party leave to amend his complaint, so that he may properly present his case. Under CCP Section 473, the Court may allow a party to amend a pleading by adding or striking, out the name of any party or by correcting a mistake in the name of a party, or a mistake in any other respect.

When, a patient pays the doctor's fee, selecting a specific doctor for the procedure, signing the consent form delineating the specific docters [Appendix A-27 to A47], the docter's "sham" declaration, by no means can be the replacement or a substitute for the signed consent, which did not authorize Dr. Steven DeGalan in any manner or form. However, the judge capitalized on this "sham" dec-

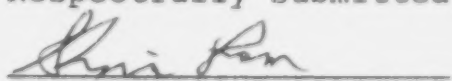
laration, violating the **PATIENT RIGHTS** and Personal Liberty to pick and choose your own doctor, granting the Summary Judgment based on consent[Appendix A-1 to A-7]. I am grieved that the judge's conscience was not bothered to perceive that, gross injustice was being done to the Petitioner's case in light of all the evidence. This was a prejudicial error.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the unjustified verdict in the Summary Judgment, including the amendment of complaint, because it is necessary and proper and allowing such review would be in furtherance of justice.

DATED: December 8, 1995

Respectfully submitted,



SHRI RAM (in pro per)

APPENDIX

MICHAEL J. REISER, ESQ. (BAR NO. 133621)
G. TRENT MORROW, ESQ. (BAR NO. 167979)
RANKIN, SPROAT & POLLACK
An Association of Professional Corations
1800 Harrison Street, Suite 1616
P.O.BOX 28765
Oakland, CA 94604

Attorneys for DEFENDANT, STEVEN DE GALAN, M.D.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

ALAMEDA, SOUTHERN DIVISION

SHRI RAM, Plaintiff,

VS.

STEVEN DE GALAN, M.D., WASHINGTON HOSPITAL, DOES 1 THROUGH 5, INCLUSIVE,

Defendants. /

NO. H-173004-5

ORDER RE: MOTION FOR LEAVE TO FILE PROPOSED AMENDED COMPLAINT BY PLAINTIFF, SHRI RAM; MOTION FOR SUMMARY JUDGMENT BY DEFENDANT, STEVEN DEGALAN, M.D.; DISMISSAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The motion of plaintiff, SHRI RAM, for leave to File Proposed Amended Complaint, and the Motion for Summary Judgment by defendant, STEVEN DEGALAN, M.D.,

were both scheduled for hearing on August 24, 1994, at 2:00 p.m., in Department 50 of the Alameda County Superior Court. Pursuant to the Court's tentative ruling made on or about August 23, 1994, the regularly scheduled hearing on both motions, SHRI RAM appearing in pro per, and G. Trent Morrow appearing on behalf of defendant DR. DEGALAN, and upon proof being made to the satisfaction of the Court and good cause appearing therefor;

IT IS FURTHER ORDERED that defendant, STEVEN DEGALAN, M.D.'S Motion for Summary Judgment is hereby granted. Plaintiff failed to submit evidence which would refute or raise triable issues of material fact as to Plaintiff 's consent to defendant DR. DEGALAN'S participation in performing the medical procedure complained of. See all of Defendant's evidence submitted in supp-

ort of the motion including Defendant's

Exhibit's A-I and declaration of Degalen.

Presented and signed

DATED: SEP 14,1994

ENDORSED FILED
Alameda County
Sep 14 1994

/s/ JOSEPH HURLEY
JUDGE OF THE SUPERIOR COURT

Approved As CONFORMING TO COURT ORDER:

/s/ MARK L. EATON
JUDGE OF THE SUPERIOR COURT

MICHAEL J. REISER, ESQ. (BAR NO. 133621)
G. TRENT MORROW, ESQ. (BAR NO. 167979)
RANKIN, SPROAT & POLLACK
An Association of Professional Corporations
1800 Harrison Street, Suite 1616
P.O.BOX 28765
Oakland, CA 94604
(415) 465-3922

Attorneys for DEFENDANT, STEVEN DE GALAN, M.D.

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF ALAMEDA

SOUTHERN DIVISION

SHRI RAM, Plaintiff,

VS.

STEVEN DE GALAN, M.D., WASHINGTON HOSPITAL, DOES 1 THROUGH 5, INCLUSIVE,

Defendants. /

NO. H-173004-5

PROPOSED ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF RULING ON MOTION FOR SUMMARY JUDGMENT.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The motion of plaintiff SHRI RAM

for an order granting reconsideration from Summary Judgment came on regularly for hearing in Department 50 of the above-entitled court on October 12, 1994.

Based upon the pleadings and the file in this action, the moving and opposition papers, and the tentative ruling of the court, which remained uncontested,

It is hereby ordered that plaintiff's motion for reconsideration is granted and upon reconsideration, the motion to set aside the order granting Defendant's Summary Judgment is denied.

Presented and signed

DATED: OCT. 26, 1994

/s/ MARK L. EATON
JUDGE OF THE SUPERIOR COURT

ENDORSED FILED, ALAMEDA COUNTY
OCT. 26, 1994

Ronald G. Overholt, Exec. off/Clerk
By Joanne Norcup

MICHAEL J. REISER, ESQ. (BAR NO. 133621)
G. TRENT MORROW, ESQ. (BAR NO. 167979)
RANKIN, SPROAT & POLLACK
An Association of Professional Corporations
1800 Harrison Street, Suite 1616
P.O.BOX 28765
Oakland, CA 94604
(415) 465-3922

Attorneys for Defendant, STEVEN DE GALAN, M.D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

SOUTHERN DIVISION

SHRI RAM, Plaintiff,

VS.

STEVEN DE GALAN, M.D., WASHINGTON HOSPITAL, DOES 1 THROUGH 5, INCLUSIVE,

Defendants. /

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The motion of plaintiff, SHRI RAM for leave to file proposed amended complaint came on regularly for hearing in Department 50 of the above-entitled court on October 12,

1994.

Based upon the pleadings and the file in this action, the moving and opposition papers, and the upon the tentative ruling of the court, which was uncontested, IT IS HEREBY ORDERED that plaintiff's motion for leave to file proposed amended complaint is DENIED.

DATED: OCT. 26, 1994

/s/ MARK L. EATON
JUDGE OF THE SUPERIOR COURT

ENDORSED FILED, ALAMEDA COUNTY
OCT. 26, 1994

RONALD G. OVERHOLT, Exec. Off/Clerk
By Joanne Norcup

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FILED:
JUN 26 1995

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SHRI RAM, Plaintiff and Appellant,

V.

STEVEN DeGALAN,
Defendant and Respondent

A067814
(Alameda County
Super. Ct. No. H-173004-5)

Appellant, Shri Ram, filed a complaint against Dr. Steven DeGalen, M.D. – (respondent) and Washington Hospital[1]

[1] Although the order is not included in the record, appellant states that the court previously dismissed his claims against Washington Hospital.

alleging causes of action for assault and battery, and intentional infliction of emotional distress, based upon the allegation that Dr. DeGalen performed some medical procedures upon appellant without his consent. The court granted respondent's motion for summary judgment in favor of Dr. DeGalen on the ground that appellant "failed to present evidence which would refute or raise a triable issue of material fact as to [appellant's] consent to [respondent's] participation in performing the medical procedure complained of." The Court also denied appellant's motion to amend his complaint. This appeal followed[2].

---

[2]Appellant purports to appeal from the order granting summary judgment, and a subsequent order granting reconsideration, but then reaffirming the court's order granting summary judgment. An order granting summary judgment is not appealable. Nevertheless, in the interest of judicial economy, we exercise our discretion to construe the court's order granting reconsideration and reaffirming its order

FACTS

Respondent's motion for summary judgment was based on the following statement of material undisputed facts:

"In or about June 1993, [appellant] presented to the Outpatient Cardiac Catheterization Laboratory of Washington Hospital complaining of chest discomfort at rest and during exertion, with radiation to the left arm. [Appellant] was examined by Romesh Japra, M.D., who scheduled [appellant] for cardiac catheterization and coronary cineangiogram on June 22, 1993, at Washington Hospital."

---

granting summary judgment to include a judgment of dismissal, because, by reaffirming its order granting summary judgment, the court clearly intended to dispose of all of the issues in the action. (See, e.g., Avila V. Standard Oil Co.(1985) 167 Cal. App. 3d 441, 445.)

"On June 21, 1993, the day before the scheduled procedure,[appellant] performed pre-admission registration at Washington Hospital. During the registration,[appellant] signed a consent form for Dr. Japra to perform the cardiac procedures, which included cardiac catheterization, coronary angiograms, and percutaneous transluminal coronary angioplasty."

"The consent form signed by [appellant] on June, 1993, expressly states that '[t]he operations or procedures will be performed by the physician or surgeon named... together with associates and assistants...from the medical staff of Washington Hospital to whom the physician or surgeon may assign designated responsibilities.' The Consent form also provides: 'Your signature below constitutes your acknowledgement(1) that you have read and agree to the foregoing;(2) that the operation or procedure set forth below has

been adequately explained to you by the above named physician or surgeon; (3) that you authorize and consent to the performance of the operation or procedure....'"

"On the morning of June 22,1993, [appellant] presented to Washington Hospital for the cardiac procedures. The cardiac catheterization revealed that [appellant] had a 'totally occluded left anterior descending artery after the origin of a medium sized.' Therefore a coronary angioplasty was required."

"[Respondent] Steven DeGalen, M.D., was designated as the 'assistant' for the coronary angioplasty procedure which was performed for [appellant]...by Dr. Japra on June 22,1993."

"As an assistant, [respondent]

was responsible for performing the following routine preparatory work for Dr. Japra: administering local anesthetic to numb the groin area: locating the vein and artery, gaining access by inserting sheathing into the vessels to prepare the plaintiff for the angioplasty and placing the catheter in a procedural angiogram."

"[Respondent] initially prepared for entry of the sheathing at the right groin. However, entry at the right groin was impeded which required that [respondent] withdraw the sheathing from the right side."

"Impeded entry into a vessel is a normal complication of preparing a patient for a coronary angioplasty, especially for patients such as the [appellant] who have had previous angioplasties."

"Dr. Japra successfully performed the ... procedure by entry in the left groin."

"It was not [respondents'] responsibility to perform, nor did he perform any of the mechanical aspects of the angioplasty procedure. The coronary angioplasty procedure was performed entirely by Dr. Japra."

SUMMARY JUDGMENT

"A defendant...has met his burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant... has met that burden, the burden shifts to the plaintiff...to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Cal. Code Civ. Proc., Sec. 437c,subd.(o)(2).)

Lack of consent is an essential element of an assault and battery claim. (See,e.g. Traxler V. Varady (1993) 12 Cal. App. 4th 1321, 1333; Osborn V. Irwin Memorial Blood Bank (1992) 5 Cal. App.4th 234,287; Kritzer V. Citron (1950) 101 Cal. App.2d 33, 39-40). The basis for responent's summary judgment motion was that appellant signed a consent form that specifically authorized Dr. Japra, and his assistants, to perform the angioplasty and related cardiac procedures, and that, Dr. DeGalen was Dr. Japra's assistant. As evidentiary support for these assertions, respondent submitted the signed consent form, and the declarations of Dr. DeGalen and Dr. Japra, that Dr. DeGalen was acting as Dr. Japra's assistant. Respondent also submitted a medical record titled "Percutaneous transluminal Coronary Angioplasty Procedure Note," that listed Dr. Japra as the

"surgeon" and Dr. DeGalen as the assistant. This evidence was sufficient to meet respondent's burden, and shift the burden to appellant to create a triable issue of fact on the essential element of lack of consent. (Cal. Code Civ. Proc., 437c, subd.(o)(2).)

Appellant did not dispute that he signed the consent form. Instead, he argued that the consent form should be construed as only authorizing the participation of the doctors whose names were listed on the form. He asserted that the consent form allows participation of an unnamed assistant only in the event of an emergency. He relied on the following underscored parenthetical: "The operations or procedures will be performed by the physician or surgeon

named above (or in the event of any emergency causing his or her inability to complete the procedure, a qualified substitute physician or surgeon), together with associates and assistants...from the medical staff of Washington Hospital to whom the physician or surgeon may assign designated responsibilities."

Construction of the language of the consent form is an issue of law, that we review de novo. (Osborne V. Cal-Am Financial Corp. (1978) 80 Cal.App.3d259,267.) The consent form is not reasonably susceptible of the construction appellant advocates. The placement of the parenthetical relating to consent to a substitute physician or surgeon in the event of an emergency directly after the reference to the "surgeon named above" indicates that it relates to and modifies that phrase.

The only reasonable construction is that the patient consents to have the procedure performed by the "physician or surgeon named above... together with associates or assistants," and if an emergency arises which prevents the named surgeon from presiding, further consents to having a qualified surgeon other than the surgeon "named above," perform the procedure.

Appellant further failed to create a triable issue of fact with respect to respondent's factual assertion that Dr. DeGalen was Dr. Japra's assistant. The only evidence cited in appellant's separate statement of disputed facts was his declaration, in which he states that he signed "one consent form authorizing only Dr. Japra to perform PTCA

and the other one authorizing Dr. Romine and Dr. Sywak for standby coronary artery bypass graft." Rather than offer evidence refuting the factual assertion that Dr. DeGalen was Dr. Japra's assistant, he reiterated the legal contention we have already resolved against him, that the form should be construed as consent only to have procedures performed by the named physician. Appellant also objected to the affidavits submitted by the respondent and Dr. Japra, and to the medical records, contending they were false and distorted. Yet, he offered no evidence in support of these objections, and many of the factual errors he alleged were not, in any event, material to the question whether respondent was Dr. Japra's assistant.[3]

---

[3]Appellant repeatedly cites a document titled "Patients Bill of Rights" that he claims confers upon patients the right to have the names of all assistants disclosed on the consent form. It states only

Thus, appellant consented to Dr. DeGalen's participation as Dr. Japra's assistant.

Appellant nevertheless contends that a factual dispute existed as to whether the procedures performed by respondent were "preparatory" as described in the medical reports, or whether he "invaded" appellant's heart with a catheter, and released dye.

---

that the patient will receive "[i]nformation on the name of your attending physician plus the names and professional relationships of other doctors who see you." The caption further indicates that the "Patients Bill of Rights" is provided by "Doctors Medical Center," whereas the procedures appellant complains of were performed at Washington Hospital. This document is irrelevant to interpretation of the scope of the consent form appellant signed, and was not, in any event, submitted to the court in his opposition to the motion for summary judgment.

Assuming, arguendo, that appellant's declaration offering his lay testimony that he saw this occur on the video screen is sufficient to create an issue of fact, it is not a material issue, because there is no factual dispute that it was Dr. Japra who ultimately performed the successful angioplasty, not Dr. DeGalen. The particular acts performed by Dr. DeGalen in his role as Dr. Japra's assistant are immaterial. The consent form also did not purport to specify the scope of procedures as an assistant may perform.

II

Denial of Leave to Amend

Appellant also contends that it was an abuse of discretion to deny his motion to amend his complaint, which he filed after the motion for summary judgment was fully briefed. Appellant sought to

add allegations that after respondent began to perform certain procedures appellant told him to stop and demanded Dr. Japra, apparently in an effort to establish that he withdrew his consent while Dr. DeGalen was working on him.

The court was well within its discretion to deny leave to amend because the motion for summary judgment was already pending, and therefore the timing of the amendment suggested that the proposed new allegations were sham pleadings designed to evade the summary judgment. (See,e.g., Amid V. Hawthorne Community Medical Group, Inc. (1989) 212 Cal.App.3d1383,1390-1391.)

III.

Bias or Prejudice of Trial Court

Appellant finally contends that

the trial court was biased against him. He complains that in an earlier proceeding, in which the hospital obtained a dismissal, the court warned appellant that he would not survive summary judgment. Appellant, however, acknowledges that the judge who made this remark did not decide the summary judgment motion.

He further notes that the judge presiding over the summary judgment motion reacted with anger when appellant suggested that respondent, who is white, could not have been Dr. Japra's assistant because appellant has never known a white doctor to be an assistant to a "brown" doctor. To the contrary the court's objection to appellant's injection of irrelevant racial stereotypes into the proceeding was appropriate, and is not evidence of bias.

IV.

Sanctions

Respondent requests that appellant be sanctioned for filing a frivolous appeal. Although appellant's contentions are not meritorious, we are not persuaded that they are frivolous, especially given the fact that appellant is in propria persona. (See Code Civ. Proc., Sec.907.)

CONCLUSION

The Judgment is affirmed. Respondent is entitled to costs.

_____
Stein,J.

We Concur:

_____
Strankman, P.J.

_____
Dossee,J.

(Ram V. DeGalen-A067814)

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION: 1

RAM, SHRI
VS.
DEGALEN, STEVEN
A067814 Old No. A066466
Alameda County No. H1730045

BY THE COURT:

The petition for rehearing is denied.

Dated: JUL 25 1995

/s/ STRANKMAN,P.J.

FILED
Court of Appeal First App. Dist.

JUL 25 1995
RON D. BARROW, CLERK

By_____
Deputy

First Appellate District, Division One, No.A067814 S047991

IN THE SUPREME COURT OF CALIFORNIA

SHRI RAM, Appellant

V.

STEVEN DEGALEN, Respondent

Petition for review DENIED.

/s/ LUCAS
Chief Justice

SUPREME COURT
FILED
SEP 27 1995

Robert Wandruff Clerk
Deputy

TO: SHRI RAM
(name of patient)

Your/the patients physician is RK JAPRA, M.D.

1. The hospital maintains personnel and facilities to assist your/the patient's physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury or even death, from both known and unforseen causes, and no warranty or guarantee is made as to result or cure. You have the right to be informed of such risks as well as the nature of the operation or procedure; the expected benefits or effects of such operation or procedure; and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the oportunity to receive this information and have given your consent. You have the right to consent or to refuse any proposed operation or procedure any time prior to its performance.
2. Your/the patient's physicians and surgeons have recommended the operations or procedures set forth below. Upon your authorization and consent the operations or procedures set forth below, together with any different or further procedures which in the opinion of the supervising physician or surgeon may be indicated due to an

emergency, will be performed on you/ the patient. The operations or procedures will be performed by the physician or surgeon named above(or in the event of any emergency causing his or her inability to complete the procedure, a qualified substitute physician or surgeon), together with associates and assistants, including anesthesiologists, pathologists and radiologists from the medical staff of Washington Hospital to whom the physician or surgeon may assign designated responsibilities. The person in attendance for the purpose of performing specialized medical services such as anesthesia, radiology or pathology are not agents, servants or employees of the hospital or your/the patient's physician or surgeon, but are independent contractors, and therefore your agents, servants, or employees.

3. The pathologist is hereby authorized to use his or her discretion in disposing of any member, organ or other tissue removed from your/the patient's person during the operation(s) or procedure(s) set forth below.
4. Your signature below constitutes your acknowledgement (1) that you have read and agree to the foregoing;(2) that the operation or procedure set forth below has been adequately explained to you by the above named physician or surgeon; (3) that you authorize and consent to the performance of the operation or procedure;

(4) that you authorize and consent to the administration of anesthesia for the said operative procedure.

OPERATION OR PROCEDURE CARDIAC CATHETERIZATION, CORONARY ANGIOGRAMS, AND PERCUTANEOUS TRANSLUMINAL CORONARY ANGIOPLASTY

Date 6-21-93 Signature /s/ Shri Ram

Time 4.55 p.m.

Witness /s/ Margaret M. Ladue RN

RAM, SHRI 2121662
Japra RK MD 50Y M
027-43-52 O 06/22/93

WASHINGTON HOSPITAL HEALTHCARE SYSTEM
Washington Township Hospital Dist.
2000 Mowry Ave, Fremont, CA 94538

AUTHORIZATION FOR AND CONSENT TO SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES

Form ADT 009A (Rev. 1/84)

TO: SHRI RAM
(name of patient)

Your/the patients physician is

KG ROMINE, MD/A SYWAK, MD

1. The hospital maintains personal and facilities to assist your/the patient's physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury, or even death, from both known and unforseen causes, and no warranty or guarantee is made as to result or cure. You have the right to be informed of such risks as well as the nature of the operation or procedure; the expected benefits or effects of such operation or procedure; and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the opportunity to receive this information and have given your consent. You have the right to consent or to refuse any proposed operation or procedure any time prior to its performance.
2. Your/the patient's physicians and surgeons have recommended the operations or procedures set forth below. Upon your authorization and consent the operations or procedures set forth below, together with any different or further

procedures which in the opinion of the supervising physician or surgeon may be indicated due to an emergency, will be performed on you/the patient. The operations or procedures will be performed by the physician or surgeon named above(or in the event of any emergency causing his or her inability to complete the procedure, a qualified substitute physician or surgeon), together with associates and assistants, including anesthesiologists, pathologists and radiologists from the medical staff of Washington Hospital to whom the physician or surgeon may assign designated responsibilities. The person in attendance for the purpose of performing specialized medical services such as anesthesia, radiology or pathology are not agents, servants or employees of the hospital or your/the patient's physician or surgeon, but are independent contractors, and therefore your agents, servants, or employees.

3. The pathologist is hereby authorized to use his or her discretion in disposing of any member, organ or other tissue removed from your/the patient's person during the operation (s) or procedure(s) set forth below.
4. Your signature below constitutes your acknowledgement(1) that you have read and agree to the foregoing; (2) that the operation or procedure set forth below has been adequately explained to you by the above named physician or surgeon; (3) that you authorize and consent to the performance of the operation or procedure; (4) that you authorize and consent to the administration of anesthesia for the said operative procedure.

OPERATION OR PROCEDURE

CORONARY ARTERY BYPASS GRAFT

Date 6-21-93

Signature /s/ Shri Ram

Time 4.50 P.M.

Witness /s/ Margaret M. Ladue RN

WASHINGTON HOSPITAL HEALTHCARE SYSTEM

Washington Township Hospital Dist.
2000 Mowry Ave., Fremont, CA 94538

RAM, SHRI	2121662
JAPRA RK MD	50 Y M
027-43-52	O
	6/22/93

AUTHORIZATION FOR AND CONSENT TO SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES

Form ADT 009A (Rev. 1/84)

DOCTORS MEDICAL CENTER
1441 Florida Ave.
Modesto, CA 95350
(209) 578-1211

CONSENTS

SURGERY OR SPECIAL DIAGNOSTIC OR

THERAPEUTIC PROCEDURES.

TO: TEJ RAM
(name of patient)

1. Your surgeon or supervising physician for this procedure is Dr. SONI

2. The hospital maintains personal and facilities to assist your physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury, or even death, from both known and unforseen causes, and no warranty or guarantee is made as to result or cure.

You have the right to be informed of such risks as well as the nature of the operation or procedure, the expected benefits or effects of such operation or procedure, and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the opportunity to receive this information and have given your consent. You have the right to consent to or refuse any proposed operation or procedure at any time prior to its performance.

3. Your physicians and surgeons will perform the following operation or procedure:

   Right and left Heart Catheterization with left Ventricle and Coronary Angiograms.

Upon your authorization and consent,

this operation or procedure, together with any different or further procedures which in the opinion of the supervising physician or surgeon may be indicated due to any emergency, will be performed on you. The operations or procedures will be performed by the supervising physician or surgeon named above(or in the event that that physician is unable to perform or complete the procedure, a qualified substitute supervising physician or surgeon), together with associates and assistants, including anesthesiologists, pathologists and radiologists from the medical staff or**DOCTORS MEDICAL CENTER** to whom the supervising physician or surgeon may assign designated responsibilities. The persons in attendance for the purpose of performing specialized medical services such as anesthesia, radiology or pathology are not agents, servants, or employees of

the hospital or your supervising physician or surgeon. They are independent contractors and therefore your agents, servants, or employees.

4. By your signature below you authorize the pathologist to use his or her discretion in disposing of any member, organ, or other tissue removed from your person during the operation or procedure set forth above.
5. To make sure that you fully understand the operation or procedure your physician will fully explain the operation or procedure to you before you decide whether or not to give consent. If you have any questions you are encouraged and expected to ask them.
6. Your signature on this form indicates (1) that you have read and

understood the information provided in this form, (2) that the operation or procedure set forth above has been adequately explained to you be your physician, (3) that you have had a chance to ask questions, (4) that you have received all of the information you desire concerning the operation or procedure and (5) that you authorize and consent to the performance of the operation or procedure.

Date: 5/15/94

Time: 1800

Signature: /s/ Tej Ram

Witness: /s/ G Barlow RN

DOCTORS MEDICAL CENTER
1441 Florida Ave.
Modesto, CA 95350
(209) 578-1211

CONSENTS

SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES

To: SHRI RAM
(name of patient)

1. Your surgeon or supervising physician for this procedure is Dr. SONI

2. The hospital maintains personnel and facilities to assist your physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury, or even death, from both known and unforeseen causes, and

no warranty or guarantee is made as to result or cure.

You have the right to be informed of such risks as well as the nature of the operation or procedure, the expected benefits or effects of such operation or procedure, and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the opportunity to receive this information and have given your consent. You have the right to consent to or to refuse any proposed operation or procedure at any time prior to its performance.

3. Your physicians and surgeons will perform the following operation or procedure: **PERCUTANEOUS TRANSLUMINAL CORONARY ANGIOPLASTY**

Upon your authorization and consent, this operation or procedure, together with any different or further procedures which in the opinion of the supervising physician or surgeon may be indicated due to any emergency, will be performed on you. The operations or procedures will be performed by the supervising physician or surgeon named above(or in the event that the physician is unable to perform or complete the procedure, a qualified substitute supervising physician or surgeon), together with associates and assistants, including anesthesiologists, pathologists and radiologists from the medical staff or DOCTORS MEDICAL CENTER to whom the supervising physician or surgeon may assign designated responsibilities. The person in attendance for

the purpose of performing specialized medical services such as anesthesia, radiology or pathology are not agents, servants, or employees of the hospital or your supervising physician or surgeon. They are independent contractors and therefore are your agents, servants, or employees.

4. By your signature below you authorize the pathologist to use his or her discretion in disposing of any member, organ, or other tissue removed from your person during the operation or procedure set forth above.

5. To make sure that you fully understand the operation or procedure, your physician will fully explain the operation or procedure to you before you decide whether or not to give consent. If you have any questions you are encouraged and expected to ask them.

6. Your signature on this form indicates (1) that you have read and understood the information provided in this form, (2) that the operation or procedure set forth above has been adequately explained to you by your physician, (3) that you have had a chance to ask questions,(4) that you have received all of the information you desire concerning the operation or procdure and (5) that you authorize and consent to the perfomance of the operation or procedure.

Date: 11-17-94

Signature: /s/ Shri Ram

Time; 11.45

Witness: Kefluigling RN

DOCTORS MEDICAL CENTER
1441 Florida Ave.
Modesto, CA 95350
(209) 578-1211

CONSENTS

SURGERY OR SPECIAL DIAGNOSTIC OR

THERAPEUTIC PROCEDURES

TO: SHRI RAM
(name of patient)

1. Your surgeon or supervising physician for this procedure is Dr. **Neal/ Mac Millan/Tobin/Concepcion**

2. The hospital maintains personnel and facilities to assist your physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury, or even death, from both known and unforeseen causes, and no warranty or gurantee is made as to result or

cure. You have the right to be informed of such risks as well as the nature of the operation or procedure, the expected benefits or effects of such operation or procedure, and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the opportunity to receive this information and have given your consent. You have the right to consent to or to refuse any proposed operation or procedure at any time prior to its performance.

3. Your physicians and surgeons will perform the following operation or procedure: Coronary Artery Bypass Graft.

Upon your authorization and consent, this operation or procedure, together with any different or further procedures which in the opinion of the supervising physician or surgeon may be indicated due to any emergency, will be performed on you. The operations or procedures will be performed by the supervising physician or surgeon named above(or in the event that the physician is unable to perform or complete the procedure, a qualified substitute supervising physician or surgeon), together with associates and assistants, including anesthesiologists, pathologists and radiologists from the medical staff or **DOCTORS MEDICAL CENTER** to whom the supervising physician or surgeon may assign designated responsibilities. The persons in attendance for the purpose of performing specialized medical services such as anesthesia,

radiology or pathology are not agents, servants, or employees of the hospital or your supervising physician or surgeon. They are independent contractors and therefore are your agents, servants, or employees.

4. By your signature below you authorize the pathologist to use his or her discretion in disposing of any member, organ, or other tissue removed from your person during the operation or procedure set forth above.
5. To make sure that you fully understand the operation or procedure, your physician will fully explain the operation or procedure to you before you decide whether or not to give consent. If you have any questions you are encouraged and expected to ask them.

6. Your signature on this form indicates (1) that you have read and understood the information provided in this form, (2) that the operation or procedure set forth above has been adequately explained to you by your physician, (3) that you have had a chance to ask questions, (4) that you have received all of the information you desire concerning the operation or procedure and (5) that you authorize and consent to the performance of the operation or procedure.

Date: 11-17-94 Time: 11.45

Signature: /s/ Shri Ram

Witness: /s/ Kefluigling RN

PRE-OP PTCA STANDING ORDERS

DATE/TIME ORDERED: 6/21/93

NURSING CARE:

1. Admit for Percutaneous Transluminal Coronary Angioplasty.
2. Pre-PTCA Teaching.
3. Bathroom Privileges.
4. NPO except for oral medication.
5. Routine Vital Signs.
6. Weigh patient in Kg.
7. Start I.V. with D_5W TKO.
8. Verify permits and consents for:
   - [X] Cardiac Catheterization, coronary angiograms and percutaneous transluminal coronary angioplasty by Dr./s/Japra
   - [X] Coronary artery bypass grafting by Dr.Romine/Sywak
   - [X] Informed Consent verified.
10. Prep right[X], and/or left[ ] groin
11. Lab work to be obtained within 48 hours prior to procedure.

[]EKG [X] CBC [X]UA []Electrolytes

[]BUN [] Blood Sugar [] CPK []Pro Time

[X] Type & Screen for 2 units Whole Blood

[X] Other SMAC-20

12. Have all Lab work, H&P, height and weight on chart before going to X-ray.

13. Void before going to X-ray.

14. Nitroglycerin 50mg in 500cc D_5W on standby, and send to Cath Lab with patient.

15. Pre-operative meds to be given on call.

[X]Valium 5 mg [X]po []IM

[X]Vistaril 50 mg [X]po []IM

16. Medications: [X] NTG gr 1/150 SL PRN chest pain.

[] Other Cardizem CD ISO T

Ecotrin 1 oo oo

9. [] Full body shave and prep. per cardiac surgery protocol on morning of procedure.

Nory 6-22-93 /s/ Japra M.D.

WASHINGTON HOSPITAL

FREMONT, CA 94538

PRE-OP PTCA
STANDING ORDERS

PATIENT IDENTIFICATION

RAM, SHRI	2121662
JAPRA RK MD	50 Y
027-43-52	O

06/22/93

PRE-OP DATA: Weight_____AGE_____

BUN_____OR RM#_____BSA_____

HEIGHT_____SEX_____CREATINE_____

ALLERGIES_____

HISTORY:

DRUGS-FLUIDS-BLOOD		**LRX**	**NaClx**
L RINGER	cc		
$NaHCO_3$	mEq		
HEPARIN	1000u		
BLOOD			
CaCl	GMS		
LIDOCAINE	mgs		
MANNITOL	GMS		
KCl	mEq		
CARDIOPLEGIA	cc		
URINE O/P	cc		
NEO-SYN	mgs		
ALBUMIN	GMS		

LAB/TIME		PRE	
		CPB	
CLINICAL DATA/TIME			
ACT	SECS.		
TEMPERATURE	^oC		
TEMPERATURE	^oC		
FIO_2,LPM			
ABG	pH		
	pCO_2		
	HCO_3/SBE		
	pO_2		
	SAT%		
ART/VEN.SATS			
BLOOD FLOW			
MAP			
PCV			

K+
GLUCOSE

IMPLANTS **REMARKS& PROBLEMS**

TYPE_____ _____

MODEL/SIZE_____ _____

SERIAL NO._____ _____

DESCRIBE PATHOLOGY _____

HEPARIN/PROTAMINE DOSAGE

PREBYPASS HEPARIN _____1000U
HEPARIN PRIME _____1000U
ADDITIONAL HEPARIN_____1000U
TOTAL HEPARIN _____1000U
TOTAL PROTAMINE _____1000U

BLOOD PRODUCTS

	DONOR	TYPE	WB/PC	DATE EXP.
1.				
2.				
3.				
4.				
5.				

CARDIOPULMONARY BYPASS

EVENT _____
ON CPB _____
COOLING _____
AORTA CLAMP ON _____
WARMING _____
AORTA CLAMP OFF _____
DEFIBRILLATE _____
OFF CPB _____
TOTAL CLAMP TIME_____
TOTAL CPB TIME _____

EQUIPMENT	TYPE	S/N
OXYGENATOR		
RESERVOIR		
PRE BYPASS FILTER		
ARTERIAL FILTER		
TUBING PACK		
ARTERIAL CANNULA		
VENOUS CANNULA		
HAEMONETICS		
VENT		
ADDITIONAL EQUIPMENT		

PROCEDURE

BCA STDBY

SURGEON JAPRA/ ROMINE S

ASSISTANT(S) _____

ANESTHESIOLOGIST _____

PERFUSIONIST Maracino

PATIENT IDENTIFICATION

RAM, SHRI
2121662

WASHINGTON HOSPITAL HEALTHCARE SYSTEM

PERFUSION RECORD
(CARDIOPULMONARY BYPASS)

SHRI RAM (in pro per)
1425 Proud Dr.
San Jose, CA 95132
Telephone: (408) 923-6491

ENDORSED FILED
ALAMEDA COUNTY
JUN 01 1994
RONALD G. OVERHOLT, Exec. Off/Clerk
By Jessica Ducusin

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

SOUTHERN DIVISION

SHRI RAM, Plaintiff,

VS.

STEVEN DeGalen, Defendant.

CASE NO. H-173004-5

DECLARATION OF PLAINTIFF SHRI RAM, IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT.

DATE: June 17, 1994
TIME: 2:00 p.m.
DEPT: 30

I, SHRI RAM, declare that:

1. On June 16, 1993, a lady from Washington Hospital admissions dept. had notified me by phone that my angioplasty was sheduled for 1.00

p.m. on 6-22-93. Further, I was instructed to arrive at the hospital by 10.00 a.m. on 6-22-93 for 1.00 p.m. angioplasty. This scheduling of June 22, 1993, for angioplasty (PTCA) at 1.00 p.m. was in agreement with the office of Dr. Romesh Japra, who had specifically informed me that the procedure will be done by him. Accordingly , Dr. Romesh Japra had personally made me sign a consent form in his office for angioplasty (PTCA) to be done by him on 6-22-93 at Washington Hospital, Fremont , Calif. Concerned for my life, I had pleaded with Dr. Japra to do his very best on the coming procedure. He had assured me that he will take good care of me.

2. On June 21, 1993, during the pre-admission registration at Washington Hospital, I was told by Margaret Ladue RN to come in at 9.00 a.m. on 6-22-93. Realizing the contradiction, I had question-

ed her the arrival time of 9.00 a.m. versus 10 a.m. for 1.00 p.m. angioplasty (PTCA) on 6-22-93. She(Margaret Ladue R.N.) responded that both the surgery rooms will be used on that day and your procedure(PTCA) will be done by Dr. Japra, soon after 9.00 a.m. on 6-22-93. Then Margaret Ladue R.N., presented couple of consent forms to be signed by me for the procedure. I signed one consent form authorizing only Dr. Japra to perform PTCA and the other one authorizing Dr. Romine and Dr. A. Sywak for standby coronary artery bypass graft.

3. At about 10.00 a.m. on 6-22-93, I was taken from my room for angioplasty (PTCA) to the surgery room at Washington Hospital. While, in the operating room, I was secured on a narrow bed and the

television was hanging in front of me. Soon, I felt a sharp stick in my right groin, shoving some apparatus downward toward my leg and upward toward my stomach. I grimaced. I was terrified, because I saw that the individual in front of me was not Dr. Japra, who was not even in the surgery room. I uttered, "Stop it, I want my doctor." Despite, disapproval and without my consent, the defendant, Dr. Steven DeGalen was still continuing the procedure. I kept on insisting, "Stop it, I want my doctor." But, Dr. DeGalen ignored me and carried on with the procedure. I saw on Television screen that the defendant, Dr. Steven DeGalen had invaded my heart and was vigorously exploring all chambers of the heart with the catheter and dye. Suddenly, Dr. DeGalen said, "All three vessels are completely plugged!" Dr. DeGalen ordered the white male surgical technician and/or nurse to prepare the

left groin for the procedure. I was scared to death that he will do the same thing for the second time, when he said, "I will have to enter through the left groin." and attempted to enter. Again, I insisted, "Stop it, I want my doctor." All the white surgical technicians and/or nurses sided with Dr. DeGalen and were forcing me that the procedure had to be done. I felt desparate, laying there helplessly. With God's mercy, whatever energy I had left, my insistence for my doctor, Romesh Japra, delayed Dr. DeGalen enough and saved me the real disaster. I saw Dr. Japra arrive in the operating room. Then, I heard Dr. DeGalen say, "I couldn't get to the other side of the heart." Surprisingly, Dr. Japra did not say anything and simply attempted the procedure through the left groin.

Dr. DeGalen was merely standing on my right side, while Dr. Japra was on my left side, doing the entire procedure by himself, without any assistance from Dr. DeGalen.

4. After, the procedure, I was profusely bleeding in the right groin. Therefore, I was left in the hallway for a prolonged period of time, and subjected to painful hard pressure on the right groin for long duration. The white male attendant told me that if the bleeding didn't stop, I will have to go back to surgery. Removing the sheath, a clamp was applied for long time.

5. Due to the incessant pain over the right abdomen, several doses of pain killer were administered at intervals. Eventually, CT scan was carried out, where I had experienced a lot of pain. At first, I was given a small cup of dye and then I was told to finish up three

large cups of water, monitered by the nurse. It was a very difficult process. Finally, the CT scan was performed.

6. For more than six weeks, I was still experiencing a lot of pain over the right abdomen and in the right groin, inducing worries about my life, disturbing my sleep and interfering with my mandatory exercise. I still have intermittent pain over my right abdomen.

7. During my treadmill/ECHO test on 6-7-93, Dr. DeGalen, who was unknown to me, had interrupted my treadmill/ECHO test to review his stuff. He had a good look at me.

8. Since, I was very upset on the incident of 6-22-93, I complained to Dr. Japra about the incident of 6-22-93, when I went for an office visit on 6-30-93. I stated that Dr.

Degalen was performing the procedure without my consent on 6-22-93. In response, Dr. Japra said to me, "I didn't know, he was out there doing the procedure." Also, Dr. Japra said to me, "Good thing you stopped Dr. DeGalen, or else he would have put a "tear" in the other blood vessel also." Upon my asking, Dr. Japra told me that Dr. DeGalen had put a "tear" in my blood vessel on the right side.

9. Once, Washington Hospital found out that I will do something about the incident of 6-22-93, they asked Dr. Japra to talk to me. Dr. Romesh Japra said to me, "Washington Hospital is saying that why is Shri still a patient of yours? Further, Dr. Romesh Japra said, "They have asked me to tell you, to take your lawsuit back." This happened on 10/4/93.

10. I was in stable condition, when I presented myself to Washington Hospital on 6-22-93 for angioplasty(PTCA).

Neither, I was experiencing a heart attack(myocardial infarction), nor was I in any state of shock. Absolutely, there was no emergency for the performance of angioplasty(PTCA) on me. The angioplasty(PTCA) was simply a preventative measure for the existing condition of the heart, culminating in elective surgery and properly a scheduled procedure.

11. During, the cardiac cthetherization and angiography of 5/25/89, 6-11-91, and 6-16-93, I saw on Television screen in the catheterization room, the exploration of my heart, with catheter and dye. Similarly, I saw on T.V. screen in the surgery room, the performance of angioplasty (PTCA) on 6/18/91 and 6/22/93 at Washington Hospital. I have written letter of 4-17-94(enclosed) to Susan Korth and letter of 5-17-94(enclosed)

to Diane Premeau seeking videotape and film of the cardiac catheterization, angiography and angioplasty (PTCA) of 6/11/91, 6/18/91, 6/16/93 and 6/22/93. This videotape and film will prove my case to the court and help refute the written medical reports: EXHIBIT E, EXHIBIT F, EXHIBIT G, EXHIBIT H, as presented by the defendant for summary judgment. Also, the videotape and film will disprove the claims of the defendant, Steven DeGalen in his declaration for summary judgment. The receipt of the videotape and film from Washington Hospital is still pending. It could take about two months, if I am forced to initiate a subpoena for the above mentioned material.

12. Dr. Romesh Japra, is the key witness to the incident of 6-22-93 at Washington Hospital, during the angioplasty(PTCA). Due to the unwillingness of

Dr. Japra to respond to my request for the taking of the deposition, It has been difficult to conduct the deposition of Dr. Japra. It seems that it will take at least two months to accomplish the taking of the deposition of Dr. Romesh Japra.

13. Although, I keep nitroglycerin around, I haven't had the need to use it ever.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1 day of June, 1994 at San Jose, California.

/s/ Shri Ram
(in pro per)

MICHAEL J. REISER, ESQ. (BAR NO. 133621)
G. TRENT MORROW, ESQ. (BAR NO. 167979)
RANKIN, SPROAT & POLLACK
An Association of Professional Corps.
1800 Harrison Street, Suite 1616
P.O.BOX 28765
Oakland, CA 94604
(415) 465-3922

ATTORNEYS FOR DEFENDANT, STEVEN DE GALEN MD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, SOUTHERN DIVISION

SHRI RAM, Plaintiff

VS.

STEVEN DE GALEN, M.D., WASHINGTON HOSPIT_ AL, DOES 1 through 5, INCLUSIVE,DEFEND.

NO. H-173004-5

DECLARATION OF DEFENDANT STEVEN DEGALEN, M.D., IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.

DATE: JUNE 17, 1994
TIME: 2:00 p.m.
DEPT: 30

I, STEVEN DE GALEN, M.D., declare that:

1. I am a physician, duly licensed by the State of California, and am a defendant in the above-entitled action.

2. I am a member of the staff at

Washington Hospital in Fremont, California, and am a specialist in both internal medicine and cardiology.

3. I was the designated assistant of Dr. Romesh K. Japra, for the coronary angioplasty procedure performed on the plaintiff, Shri Ram, on June 22, 1993.

4. As the designated assistant for the coronary angioplasty procedure, it was my responsibility to perform the following routine preparatory work for Dr. Japra: administering local anesthetic to numb the groin area; locating the vein and artery, gaining access by inserting sheathing into the vessels to prepare the patient for the angioplasty, and placing the catheter in a position to allow for a pre-procedural angiogram.

5. I initially prepared for entry of the sheathing at plaintiff's

right groin. However, entry at the right groin was impeded inside the vessel. Because of the impediment, it was necessary that entry be made at the left groin. Therefore, I withdrew the sheathing from the right side.

6. Impeded entry into a vessel is a normal complication of preparing a patient for a coronary angioplasty, especially for patients such as the plaintiff who have had previous angioplasties.

7. As the assistant of Dr. Japra, it was not my responsibility to perform, nor did I perform, any of the mechanical aspects of the coronary angioplasty. The angioplasty procedure was performed entirely by Dr. Japra.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17 day of May, 1994 at Hayward, California.

/s/ STEVEN DeGalen,MD

MICHAEL J. REISER, ESQ. (BAR NO. 133621)
G. TRENT MORROW, ESQ., (BAR NO. 167979)
RANKIN, SPROAT & POLLACK
An Association of Professional Corps.
1800 Harrison Street, Suite 1616
P.O.BOX 28765
Oakland, CA 94604
(415) 465-3922

ATTORNEYS FOR DEFENDANT, STEVEN DE GALEN, M.D.

SUPERIOR COURT OF CALIFORNIA, COUNTY

OF ALAMEDA, SOUTHERN DIVISION

SHRI RAM, Plaintiff,

VS.

STEVEN DE GALEN, M.D., WASHINGTON HOSPITAL, DOES 1 THROUGH 5, Inclusive, Defendants.

NO. H-173004-5

DECLARATION OF ROMESH JAPRA, M.D., IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY DEFENDANT STEVEN DEGALEN, M.D.

DATE: June 17, 1994
TIME: 2:00 p.m.
DEPT: 30

I, ROMESH JAPRA, M.D., declare that:

1. I am a physician, duly licensed by the State of California, and I performed the coronary angioplasty

procedure upon the plaintiff Shri Ram on June 22, 1993.

2. I am a member of the staff at Washington Hospital in Fremont, California and am a specialist in cardiology.

3. Defendant Steven De Galen, M.D., was the designated physician assistant in the coronary angioplasty procedure which I performed on the plaintiff, Shri Ram, on June 22, 1993.

4. The EXHIBIT "C": OUT Patient Cardiac Catheterization Laboratory History and Physical, which is attached to this Motion for Summary Judgment, is true and correct copy of that medical report.

5. The EXHIBIT D: Authorization for and consent to surgery or Special Diagnostic Procedures, which is attached to this Motion for Summary Judgment, is a true and correct copy of the consent form signed by plaintiff on June 21, 1993, and is a true and correct copy of that

medical record.

6. The EXHIBIT E: History and Physical Examination Record, which is attached to this Motion for Summary Judgment, is a true and correct copy of that medical record.

7. The EXHIBIT F: Percutaneous Transluminal Coronary Angioplasty Procedure Note, Medical Report, dated June 22, 1993, which is attached to this Motion for Summary Judgment, is a true and correct copy of that medical record.

8. The EXHIBIT G: Discharge Summary, which is attached to this Motion for Summary Judgment, is a true and correct copy of that medical record.

9. The EXHIBIT H: Percutaneous Transluminal Coronary Angioplasty, dated June 22, 1993, which is attached to this Motion for Summary Judgment, is

a true and correct copy of that report.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 10th day of June, 1994, at Fremont, California.

/s/ Romesh Japra, M.D.

PROCEDURE: PTCA DATE: 6-22-93

PHYSICIAN: JAPRA/DeGalen

CLINICAL DX: ANGINA, CAD
ALLERGIES: NKA

PULSES	PRE	POST
DP 2/2	2/2	2/NP 2/2
R/L PT		
RAD		

	PRE	POST
BP	117/71	138/87
HEART RATE	60	73

	PRE	POST
SENSORIUM	A/O	A/O

	PRE	POST
SKIN	W/D	W/D

PREMEDS: Valium 5mg, Vistaril 50mg PO at 0950
HGB: 13.9 HCT:42 K: 4.4

TIME	IV: LR TKO (L) O_2 SAT 99%
1049	6F sheath REV
1049	7F Sheath RFA, unsuccessful, Pt refusing (L) groin prep
1100	Pt. not wanting procedure to continue until Dr. Japra here. Awaiting Dr. Japra's arrival.
1120	DP (R) now 1/2. Feet remain cool to touch 116/75.
1125	BP 121/68 HR=58 Pt dozing from Veiseal
1128	Still awaiting Dr. Japra. Eegen AP Rt iliac artery.
1131	BP= 125/79 HR=63
1132	Dr. DeGalen left room.
1140	Still awaiting Dr. Japra.
1141	125/81 HR=65

1142	Dr. Japra here. Pt awake, talking to Dr. Japra.
1144	(L) groin prepped by GH. BP 127/88, HR=67
1153	7F sheath LFA, 7F SL4 -25 -30
1157	2.0 prism LCA, LAD (inflation)
1201	#1 8 bars 60 sec
1202	#2 8 bars 90 sec
1204	#3 10 bars 60 sec
1207	#4 13 bars 60 sec [-25 -30]
1209	Exchange for 7F RCB cath, 2.0 prism - (R) graft
1225	Exchange for 7F ACS AL2 (s)
1235	Exchange for 6F PT

MEDICATIONS:

Lidocaine 2% = 20 cc (SC) 1045 SD

HEPARIN = KU IV 1051 (RS)

Protamine

NaSal O_2 3L 1015 PN

NITROGLYCERINE

Veised= 2mg IV 1100 (DN)

Veised= 1mg IV 1105 (DN)

MS = 4mg IV 1148 (DN)

Lidocaine= 10 cc 1148 (RS)

(3) 014 standard -3000 m= Wires used

ARRIVAL TIME= 1005 Discharge Time=1245

WASHINGTON HOSPITAL HEALTHCARE SYSTEM

INVASIVE VASCULAR IMAGING LOG.

PAGE I PAGE II

PTCA CONT. PHYSICIAN: JAPRA
DATE: 6-21-93

TIME:	IV:
1239	Aortogram 45 cc optiray
1241	PT Removed
1249	sterile drsg. to Lt groin.
1256	arterial and venous lines removed by GH pressure to (R) groin with compressar.
1335	C-clamp looened. Still bleeding. Reapplied (R) pedal pula PT palgable with Clamp.
1400	C-clamp removed. Sterile pressure dressing to (RT) groin with standby B/P 113/ 56
1410	To TC 16-1 via gurney GS

RAM, 2121662 027-43-52 6-21-93

WASHINGTON HOSPITAL HEALTHCARE SYST-
EM

INVASIVE VASCULAR IMAGING LOG

DOCTORS MEDICAL CENTER

PATIENT RIGHTS/ RESPONSIBILITIES

Patient Rights

Our hospital and medical staff fully endorse the California Hospital Association's List of Patient Rights. The list is posted in full throughout the hospital. These rights gurantee that you, the patient, will receive:

- Benefits of these rights without regard to sex, cultural, economic, educational or religious background; or the source of payment for your care.
- Considerate, respectful care
- Information on the name of your attending physician plus the names and professional relationships of other doctors who see you.
- As much information about a proposed treatment/procedure as you need to decide whether to accept or refuse it

- The chance to participate actively in decision about your medical care.
- Due respect for right to privacy
- Confidential treatment of your medical records
- Reasonable response to any reasonable request you make for service
- Knowledge of the hospital rules/ policies that apply to you
- Reasonable continuity of care and advance notice of appointments
- Knowledge of and the right to refuse participation in any human research experiments affecting your care
- The right to leave the hospital any time, even against the advice of your doctors
- Knowledge of medical care you need after discharge from the hospital

- An explanation of your bill, regardless of the source of payment
- The right to have all patient rights apply to your surrogate (a person legally responsible for making decisions about your medical care)

PICKING OUT A GOOD PHYSICIAN CAN BE A TRICKY PROCESS

BY DONNA ALVARADO

MERCURY NEWS STAFF WRITER

Finding a good doctor - or at least avoiding a bad one - is a task that nearly everyone faces at some time. But, it's a little trickier than finding a good haircutter, or a good house painter, because it can be difficult to evaluate a doctor's competence.

Perhaps, the first step is to ask friends and neighbors for the names of doctors they know and **trust.** For a specialist, people can ask their primary care doctor for names.

There is a variety of other sources of information that can help people avoid **BAD doctor** and perhaps find an ideal one. Here are some tips:

. Medical Board of California, Sacramento

Consumer information: (916)263-2382

What you get:

1. The status of a doctor's medical license (including any disciplinary actions such as a revocation or suspension of the license) and any formal accusations filed against him or her by the state Attorney General's Office.

2. Medical school graduated from, birth date and address.

3. Any felony convictions reported to the board since Jan. 1, 1993.

4. Any jury verdict resulting in an award of $30,000 or more against the doctor for medical malpractice reported to the board after Jan. 1, 1993.

5. A brochure available on request on how to find a good doctor, how to complain about a bad one and how the board disciplines doctors.

What you don't get:

1. Any medical malpractice lawsuits settled out of court.

2. Any investigations under-taken by the board that have not resulted in a formal accusation. This could include investigations that are in progress.

. Santa Clara County Medical Association, San Jose Consumer information: (408) 998-5700

What you get:

1. The names of three doctors in the county who are trained in the medical area the consumer requests. The names are drawn from a list of all doctors in the county medical association who want to be on the list, have valid medical licenses and haven't had disciplinary actions by the state medical board.

What you don't get:

1. Any injury verdicts against a

doctor for medical malpractice or out-of-court settlements.

. Public Citizen Health Research Group, Washington, D.C. (202)833-3000.

What you get:

1. A book titled "10,289 Questionable Doctors" that lists all the doctors nationwide who had disciplinary actions taken against them by state medical boards before Jan. 1, 1993. The book costs $200, but consumers can purchase a section for one state for $15. To order the book call (202) 833-3000 or write to Public Citizen Publication Department, Department QD, 2000 P St. NW, Washington, D.C. 20036.

What you don't get:

1. The book doesn't list disciplinary actions against doctors taken after Jan. 1, 1993.

. American Board of Medical Specialties (800) 776-2378

What you get:

1. Confirmation of whether a doctor is board-certified as a specialist in any area of medicine.

WHAT YOU DON'T GET:

1. Anything else.

. County courthouse. In Santa Clara County, 191 N. First St., Civil suit section, San Jose.

What you get:

1. Computer access to lists of civil lawsuits filed against anyone, including doctors.

What you don't get:

1. Evaluation of whether the case represents a frivolous lawsuit, a good doctor's honest mistake or a bad doctor's action.

ADMINISTERED BY
UNITED ADMINISTRATIVE SERVICES
P.O.BOX 5057
1120 S. Bascom Ave.
San Jose, CA 95150-5057

PAYMENTS HAS BEEN MADE DIRECTLY TO PROVIDER

PAY
TO THE ORDER OF RUKH M. RAM
1425 Proud Drive
San Jose, CA 95132

VOID

EXPLANATION OF BENEFITS

Company/Plan	Claim No.	Social Security#
18/ 6	0007598	573-06-1044

Patient Account No.	Relationship	Date
10.00	husband	7/19/93

Participant	Patient
Rukh M. Ram	Shri

PROVIDER SERVICE	EXPENSE CODE	DATE OF SERVICE FROM	TO
DEGALAN,STEVEN MD I/P visits	IPV	6/23/93	6/23/93
DEGALAN,STEVEN MD Asst surgeon	ASU	6/22/93	6/22/93

AMOUNT CHARGED	AMOUNT COVERED	NOT PROVIDER DISCOUNT	BENEFIT %	AMOUNT
90.00	.00	53.34	100	36.66
870.00	.00	455.00	100	415.00

PACIFIC CARDIOLOGY ASSOCIATES

Romesh"Romey" Japra,M.D.,F.A.C.C.,Inc

Clinical and Interventional

Cardio-Vascular Medicine

1900 Mowry Ave.
Suite 201
Fremont, CA 94538
Fax:(510)790-2806
Tel:(510)790-2202

27206 Calaroga Ave.
Suite 101
Hayward,CA 94545
Fax:(510)887-3125
Tel:(510)887-2202

3128 B. Santa Rita Rd.
Pleasanton, CA 94566
Fax;(510)416-1187
Tel:(510)484-4411

PACIFIC CARDIOLOGY ASSOCIATES

Steven DeGalan, M.D.

Clinical and Interventional

Cardio-Vascular Medicine

1900 Mowry Ave.
Suite 201
Fremont,CA 94538
Fax:(510)790-2806
Tel:(510)790-2202

27206 Calaroga Ave.
Suite 101
Hayward, CA 94545
Fax:(510)887-3125
Tel:(510)887-2202

3128 B. Santa Rita Rd.
Pleasanton, CA 94566
Fax:(510)416-1187
Tel:(510)484-4411

SHRI RAM (in pro per)
1425 Proud Dr.
San Jose, CA 95132
Telephone: (408) 923-6491

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

SOUTHERN DIVISION

SHRI RAM, Plaintiff
VS.

STEVEN DeGALAN,
Defendant.

ENDORSED FILED
ALAMEDA COUNTY
JUN 13 1994
CLERK OF THE SUPERIOR COURT
BY JANICE BAUMAN

CASE NO. H-173004-5

DECLARATION OF PLAINTIFF, SHRI RAM IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT

DATE: JUNE 17,1994
TIME: 2:00 p.m.
DEPT: 30

I, SHRI RAM, declare that:

1. I entered United States of America, as a foreign student (Fiji Islander), in pursuit of higher education, graduating from San Jose State University, with emphasis in Biological Science.

2. Later, I attended School of Medical Technology, achieving the certification

to practice Medical Technology in America.

3. Further, I attempted School of Specialist in Blood Bank Technology, attaining the certification of Specialist in Blood Bank.

4. In addition to my employment at the hospital, I was always engaged in teaching many American students for many years, preparing them for Medical Technology Certification. Also, I indulged in the retraining of the Medical Technologists, over the years at the hospital.

5. I have been in medical field for about 23 years, and I have gained enormous experience and knowledge in the hospital environment.

6. I have seen surgeries and have been in contact with the operations in the operating room for many years of my career in the medical field.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12 day of June, 1994, at San Jose, California.

/s/ Shri Ram